M20658 Square Enix

GRAHAM & DUNN PC

ROBERT C. CUMBOW
(206) 340-9619
rcumbow@grahamdunn.com

November 16, 2005

VIA FACSIMILE / ORIGINAL VIA FEDERAL EXPRESS

Google, Inc.
Attn: User Support, DMCA Complaints
1600 Amphitheatre Parkway
Mountain View, CA 94043

Re: Infringing Material on Google Video

Dear DMCA Complaints Manager:

This law firm is counsel to Square Enix, Inc. and its Japanese parent, Square Enix Co., Ltd. Square Enix is the creator and owner of all rights in the famous "Final Fantasy" series of games, motion pictures, merchandise, and other derivatives. One of Square Enix's most recent creations is the motion picture *Final Fantasy VII: Advent Children*. This film has already been released in Japan; but the film is still eagerly-awaited by fans in the United States and many other countries. Unfortunately, much of that anticipation has been damaged, and Square Enix's likely revenues reduced, by the recent availability of a full-length video of the film on your company's Google Video service.

1. The copyrighted work that has been infringed is the original film *Final Fantasy VII: Advent Children*, created and produced by Square Enix, released in Japan on September 14, 2005, and not yet released in the United States or other markets.

2. The material that infringes the copyrighted work listed in item #1 above is a downloadable video copy of the film in its entirety. This video appeared as one result in a Google Video search for the keywords "Advent" conducted by Square Enix personnel on November 2, 2005. The search result provided a link to the infringing copy of the film at the following URL:

http://video.google.com/videoplay?docid=-8496276499503799091&q=advent+children

3. Google may contact me at the email address, phone number, fax number, and/or postal address displayed on the front page of this letter.

4. We are without sufficient information to identify the owner/administrator of the Web page that displayed the infringing material. However, we suspect the individual is the same one who boasted about uploading the complete version of the film in a blog accessible at:

Dockets.Justia.com

http://www.xanga.com/godss_lil_boi

The entry for Wednesday, October 26, 2005 on this blog includes the following entry:

> http://video.google.com/videoplay?docid=-8496276499503799091&q=advent+children advent children!! w00t i uploaded. but then its bad quality because its on GOOGLE video uploader!! WTC.
>
> oh yea i got the original one; so no subtitles either.

You may go immediately to the page on which this blog entry appears by using this link:

> http://www.xanga.com/gOdss_lil_boi?nextdate=10%2f27%2f2005+20%3a13%3a17.183&direction=n

5. I have a good faith belief that use of the copyrighted materials described above on the infringing Web pages is not authorized by the copyright owner, its agent, or the law.

6. I swear, under penalty of perjury, that the information in the above notification is accurate, and that I am an attorney authorized to act on behalf of the copyright owner whose exclusive right has been infringed.

While we can no longer find the full-length film on the GoogleVideo engine, we videotaped the full-length film as played on GoogleVideo on November 2, 2005, and we have this videotape in hand, along with a screen-captured image from which one can confirm the date and time (both in Los Angeles time and Japan time) at which the public transmission of the film was made. That screen-capture also includes a Web link indicating www.xanga.com on the summary of the uploaded material—a link to the same site that hosts the blog referenced above.

We acknowledge your claim that:

> The sites displayed as search results or linked to by Google Services are developed by people over whom Google exercises no control. The search results that appear from Google's indices are indexed by Google's automated machinery and computers, and Google cannot and does not screen the sites before including them in the indices from which such automated search results are gathered.

However, it appears to us from our research that video images located by the Google Video engine are captured and copied onto a Google server, and then displayed *from the Google server* using Macromedia Flash 7. If that is the case, then what the Google Video engine is doing is not the kind of mere pass-through of data protected by the safe harbor provisions of the Digital Millennium Copyright Act of 1998 applicable to online service providers. Rather, the unauthorized display of the film appears to emanate from a server under Google's direct control, and if this is true, then Google is susceptible to a lawsuit for both direct and contributory infringement.

In any event, as noted above, we are no longer able to locate this film on Google Video. We assume it has been taken down, either by Google or by its original source. However, my client remains deeply concerned that this infringement occurred in the first place, that its appearance on

Google Video afforded it wider distribution than it may otherwise have received, and that this distribution has damaged Square Enix's ability to benefit fully from its still-coming U.S. and international release of its film. Square Enix is entitled to redress for the damage it has suffered, and therefore demands that you promptly:

1. provide us with any and all information you have the identity of and true contact information for the person who uploaded the unauthorized copy of the film;

2. ensure that the infringing video has been permanently removed and cannot and will not be displayed in any future Google Video searches;

3. put safeguards in place to prevent any further unauthorized display of Square Enix's copyrighted works, such as *Final Fantasy VII: Advent Children*; and

4. confirm to us **in writing no later than November 28, 2005** that you have complied with these demands.

Neither this letter nor your compliance with the demands herein may be taken as a waiver of Square Enix's right to pursue legal action regarding this or any other infringement of its protected work. Square Enix expressly reserves all such rights.

We look forward to your timely reply.

Sincerely,

GRAHAM & DUNN PC

Robert C. Cumbow

RCC/rcc

cc: Square Enix, Inc. (Neal Black)
Square Enix Co., Ltd. (Michihiro Sasaki)

M20658-659359

* * * COMM CATION RESULT REPORT (NOV. 16. 20 2:55PM) * * *

FAX HEADER: GRAHAM DUNN

TRANSMITTED/STORED : NOV. 16. 2005 2:53PM

FILE	MODE	OPTION	ADDRESS	RESULT	PAGE
525	MEMORY TX		659#20658#16506182649	OK	4/4

REASON FOR ERROR
E-1) HANG UP OR LINE FAIL
E-2) BUSY
E-3) NO ANSWER
E-4) NO FACSIMILE CONNECTION

GRAHAM & DUNN PC
Pier 70
2801 Alaskan Way ~ Suite 300
Seattle, WA 98121-1128
(206) 624-8300
From Tacoma: (253) 572-9294
Facsimile: (206) 340-9599

FACSIMILE COVER SHEET

To	Fax Number	Phone Number
Attn: User Support, DMCA Complaints Google, Inc.	650.618.2649	

From: Robert C. Cumbow (rcumbow@grahamdunn.com)

Regarding: Infringing Material on Google Video   Matter No.: 20658

Message: **Please see attached letter.**

Date/Time Sent: 11/16/05 at ___________

Total Pages (including cover sheet): 4   Return Confirmation to: RAcosta

If you do not receive all pages, please phone Office Services at 206-624-8300.

CONFIDENTIALITY NOTE
This facsimile may contain privileged and confidential information intended only for the use of the addressee(s) named above. If you are not the intended recipient of this facsimile, or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination or copying of this facsimile is strictly prohibited. If you have received this facsimile in error, please immediately notify us by telephone and return the original facsimile to us at the above address via the U.S. Mail. Thank you.

From: Origin ID: (206)624-8300
Rachel Acosta
Graham and Dunn PC
2801 Alaskan Way Ste 300
Pier 70
seattle, WA 98121

FedEx Express

E

CLS102705/09/16

Ship Date: 16NOV05
ActWgt: 1 LB
System#: 8941612/INET2300
Account#: S *********

REF: 20658

Delivery Address Bar Code

SHIP TO: (206)340-9385 BILL SENDER

Attn: User Support, DMCA Complaint
Google Inc.
1600 Amphitheatre Parkway

Mountain View, CA 940431351

PRIORITY OVERNIGHT

THU
Deliver By:
17NOV05

TRK# **7917 8474 5445** FORM 0201

SJC A2

94043 -CA-US

WA NUQA

Shipping Label: Your shipment is complete

1. Use the 'Print' feature from your browser to send this page to your laser or inkjet printer.
2. Fold the printed page along the horizontal line.
3. Place label in shipping pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

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